

# Czech Republic: High Treason or Just Constitutional Nudging?

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Marek Antoř Di 12 Mrz 2013

The Czech President Václav Klaus has left office last Thursday (March 7) after a decade when his second term expired. Three days earlier, on March 4, he was indicted for high treason by the Senate, the second chamber of the Czech parliament. One might think this is just another scene from “[Leaving](#)”, the last absurdist play written by Klaus’s predecessor Václav Havel. It is not, however; and the proceeding before the Constitutional Court is pending.

The Current Constitution of the Czech Republic (adopted in 1992) largely draws on democratic traditions of the interwar parliamentary regime in former Czechoslovakia. The provisions of the Constitution saying that the President of the Republic “shall not be responsible for the performance of his duties” (Art. 54), with the sole exception of the “high treason” (Art. 65) for which he may get impeached, were clearly inspired by 1920 Constitution. However, a major distinction was made. The 1920 Constitution provided for a special procedure of prosecution of the President, but the high treason (in Czech: “velezrada”) itself was a general crime established and defined by the Criminal Act. On the contrary, the 1992 Constitution has intentionally established the high treason as a special constitutional offence which can only be committed by the President. Therefore, the Czech law nowadays distinguishes between treason (“vlastizrada”) and high treason (“velezrada”), which are of as vastly different substance as similar they sound.

The former is a crime for which any Czech citizen “who is in contact with a foreign power or a foreign agent and commits the crime of subversion of the Republic, terrorist attack, terror or sabotage shall be sentenced to a term of imprisonment of from fifteen to twenty years”. The latter, on the other hand, is defined as “any conduct of the President of the Republic directed against the sovereignty and integrity of the Republic as well as against the democratic order of the Republic”. If the President is found guilty by the Constitutional Court, the only consequence is the “loss of the office as well as eligibility to reacquire it in the future ... [and of] the right to the remuneration or other benefits that ... the President should receive after leaving office.” It is remarkable that regardless of how serious the name of the offense is, the language of the definition is somewhat weaker and wider, especially in the last part.

And it is this last part, conduct “against the democratic order”, which was used by the senators as the basis for the indictment. In particular, they rely on five Klaus’s acts and omissions. First, he explicitly refused to ratify the European Council Decision on the Euro stability mechanism (2011/199/EU), although it was proposed by the Government and approved by the Parliament. Second, after the Senate had rejected two his nominees, he refused to propose and appoint any further judge to the Constitutional Court, with the outcome that the number of judges has decreased from 15 to 12 and its performance has been affected accordingly.

Third, on the New Year’s Day 2013 he issued an amnesty which, inter alia, discontinued all pending criminal proceedings for crimes with maximal possible sentence less than ten years which had been instituted more than eight years ago. This decision has been applied to many cases of serious economic criminality and caused considerable public outcry. The Senate argues that it has undermined the public trust in law enforcement and has affected the overall functioning of criminal justice.

Fourth, he has ignored an administrative court’s judgement from 2007 (confirmed subsequently also by the Supreme Administrative Court) and has not taken any decision in the case of a complaining judicial candidate, who was thus never appointed to be a judge. Fifth and last, for almost four years he had not ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, although it was approved by the

Parliament, and only did so in March 2012 after being called by the Senate.

When impeachment proceedings get started only three days before the expiration of the term of the President, one would expect that something very serious or at least something very new got revealed. But neither is the case here. I certainly agree that the acts described may be found unwise, improper and exceeding the limits which a non-responsible head of state should respect in democracy. I would even agree that some of them are illegal, although this may be arguable. Nonetheless, I am not convinced that they are serious enough to be considered, separately or altogether, as high treason. Furthermore, the indictment relies largely on either past or continuous conduct of Václav Klaus, which could have been challenged long time ago. For instance, the Senate could have brought a competency dispute to the Constitutional Court concerning the (non-)ratification of international treaties, but never even tried to do that.

So what on earth motivated the senators to start the impeachment now? At least three possible explanations come to my mind. First, the Constitution prohibits anyone to become the President more than twice "in succession". Although it does not seem very likely now, technically Václav Klaus could run for another term after five years, which is a prospect some may fear. Were he found guilty for high treason, this problem would disappear. Second, the new President (and former Prime Minister 1998-2002) Miloš Zeman may be more Euro-optimistic than his predecessor, but in many other respects quite similar to him. Together with the increased legitimacy which is a consequence of the shift enacted last year from indirect to direct election of the President, it gives rise to serious doubts about his future behaviour in office. The indictment thus might be seen as an invitation for the Constitutional Court to clarify what is the constitutional position of the President and set him stricter limits.

And last, it may also be read simply as a political revenge by the opposition which holds a majority in the Senate. Despite all controversies, Václav Klaus used to enjoy considerable public support, but it has been damaged substantially by the amnesty. His popularity slipped from 53 % in December 2012 to 26 % in January 2013, which might have contributed to the Senate's decision.

Whatever the reasons were, the dice has been cast. The case will be heard by the Constitutional Court in preference to other cases and the decision is expected by the end of March.

(It needs to be noted that the 2012 constitutional amendment which enacted the direct election of the President affected also the provisions on his impeachment. In the future, he may be charged not only for high treason, but also for "gross violation of the Constitution". Furthermore, not a simple majority in the Senate but rather a three-fifths majority in both chambers is required for indictment. None of these novelties, however, applies to the present case as the new provisions have only come to force on March 8, after the Klaus's term had expired.)

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